REMARKS

Claims 1-19 are pending. Applicant has amended claim 1, 4, 8 and 15, cancelled claim 5 and added claims 20-26. Applicant respectfully submits that claims 1-4 and 6-26 are in condition for allowance as set forth in detail below.

Amendment to the Specification

The specification has been amended to correct a reference to a prior Chinese patent application. In the PCT application of which the present application is a national stage application, it is clear that the application no. 81102855 referred to is a Chinese application. However, the English translation submitted with the present application erroneously referred to the 81102855 application as a U.S. patent application. The correction does not introduce any new matter.

Restriction Requirement

Applicant respectfully submits that the Restriction Requirement issued on September 20, 2007, was improper, and consequently rescinds the election made on October 17, 2007.

Because the present application is a national stage application submitted under 35 U.S.C. § 371, unity of invention (*not* restriction) practice is applicable. *MPEP* 1893.03(d). Under the unity of invention practice, an application should relate to only one invention or, if there is more than one invention, that applicant would have a right to include in a single application only those inventions which are so linked as to form a single general inventive concept. *Id.*

A group of inventions is considered linked to form a single general inventive concept where there is a technical relationship among the inventions that involves at least one common or corresponding special technical feature. *Id.* Specifically, "a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories: ... (4) a process and an apparatus or means specifically designed for carrying out the said process." 37 C.F.R. § 1.475. An apparatus or means is "specifically designed" for carrying out the process when the apparatus or means is *suitable* for carrying out the process with the technical relationship being present between the claimed apparatus or means and the claimed process. The expression specifically designed does not imply that the apparatus or means could not be used

for carrying out another process, nor does it imply that the process could not be carried out using an alternative apparatus or means. *MPEP* 1893.03(d).

In the present case, independent apparatus claim 8 includes features that are adapted to create conditions required by the process steps of claim 1. The apparatus is thus suitable for carrying out the process of claim 1 with technical relationship being present between the apparatus and process. Further, claim 8 has been amended to recite that the apparatus is "for carrying out the extraction method of claim 1". The pending claims thus meet the unity of invention requirement.

For at least these reasons, Applicant respectfully requests the withdrawal of the Restriction Requirement.

Rejections Under 35 U.S.C. §112

Claims 1-5 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Claim 5 has been cancelled, and claim 1 has been amended to incorporate the limitations of claim 5, replacing "raw material" with "Chinese traditional medicine or plant". Applicant respectfully submits that the written description requirement is met by claims 1-4.

First, the subject matter in claims 1-4 is included in the originally filed application, at least in part, in the originally filed claims. "There is a strong presumption that an adequate written description of the claimed invention is present when the application is filed." *MPEP* 2163(I) (A) (quoting *In re Wertheim,* 541 F.2d 257, 263, 191 USPQ 90, 97 (CCPA 1976)). The issue is whether a person skilled in the art would understand applicant to have invented, and been in possession of, the invention as broadly claimed. *MPEP* 2163(II)(A)(3)(a)(ii). Description requirement "does not require the description to be of such specificity that it would provide individual support for each species that the genus embraces." *Id.*

In the present case, the rejected claims cover a *method* applied to a Chinese traditional medicine or plant, *not* the genus of Chinese traditional medicine or plant itself. The claimed method includes such steps as crush, soaking and vibrating, which are well understood processes, at least individually and broadly. A person skilled in the art would understand applicant to have understood that such a method could be applied broadly to Chinese traditional medicine or plant.

A person skilled in the art thus would understand applicant to have invented, and been in possession of the invention as claimed.

For at least these reasons, Applicant respectfully request the withdrawal of the claim rejection based on alleged failure to comply with description requirement.

Claims 1-5 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 5 has been cancelled. Applicant has further amended claim 1 to overcome any lack of antecedent basis and respectfully request the withdrawal of the claim rejection based on indefiniteness.

Rejections Under 35 U.S.C. §103

Claims 1 and 3-5 are rejected under 35 U.S.C. §103(a) as being unpatentable over Wang (U.S. Patent 4,018,755) in view of Bloom (U.S. Patent 5,902,224). Applicant respectfully traverses.

Claim 1 requires, in part, that in the extracting step, the nonlinear vibration of 18-33 KHz is carried out under the pressure in the range of 25-35MPa. A combination of *Wang* and *Bloom*, even if proper, fails to disclose or suggest this feature. A combination of *Wang* and *Bloom* would result in, at most, sonicating the soybeans (without a high pressure) and then performing centrifugal sediment under a certain pressure. The Examiner equates the sonication with the nonlinear vibration. However, *Wang* only discloses performing sonication at a fixed frequency of 20 KHz (see line 22 in column 3 of example 1 in *Wang*) but does not describe any "nonlinear" vibration. Nonlinear vibration, which is a term of art and described in, for example, Chinese patent application 81102855 (referred to on page 4 of the Specification and also published as U.S. Patent No. 4,749,891), makes water in critical situation generate the waves with different frequencies and different swing (amplitude) (see page 4, line 21 to page 5, line 1 of the specification). In other words, the vibration frequency waves in the range of 18-33 KHz, and the waves, do not show a linear change with the time, but show a nonlinear change. Such nonlinear vibration can be produced using, for example, the apparatus described in Figure 6 and associated text of the specification: When the vibrating slice (plate) of the nonlinear vibration apparatus is electrified, the nonlinear vibration can be produced, using the magnetostrictive effect, to meet the

requirement that the extraction of different component be carried out under the vibration of different frequencies.

Without the hindsight of the invention disclosed in the present application, a person of ordinary skill in the art would not have combined *Wang* and *Bloom* to achieve the claimed invention. Further, even if the cited referenced could be legitimately combined, the combination would not include every limitation of claim 1. *MPEP* 2143.03. For at least these reasons, Applicant respectfully requests the withdrawal of the rejection of claim 1, as well as dependent claims 3 and 4, under 35 U.S.C. §103(a) as being unpatentable over Wang (U.S. Patent 4,018,755) in view of Bloom (U.S. Patent 5,902,224).

Claims 1-5 are rejected under 35 U.S.C. §103(a) as being unpatentable over Wang (U.S. Patent 4,018,755) in view of Bloom (U.S. Patent 5,902,224) and in view of Yokotsuka et al. (U.S. Patent 4,064,277). Applicant respectfully traverses.

As discussed above, any combination of *Wang* and *Bloom* would not include all the limitations of claim 1. *Yokotsuka* does not completely, if at all, fill the gap. Thus, any combination of the three sited references would not include every limitation of claim 1. For at least these reasons, Applicant respectfully requests the withdrawal of the rejection of claim 1, as well as dependent claims 2-4, under 35 U.S.C. §103(a) as being unpatentable over Wang (U.S. Patent 4,018,755) in view of Bloom (U.S. Patent 5,902,224) and in view of Yokotsuka et al. (U.S. Patent 4,064,277).

Claims 6 and 7

Although the Examiner stated that no claims were allowed, the Examiner has articulated no ground for rejecting or objecting to claims 6 and 7. Applicant therefore respectfully requests the allowance of claims 6 and 7.

New Claims

New claims 20-26 have been added without introducing any new matter, and are believed to be allowable.

Summary

In view of the above amendments and remarks, Applicant respectfully requests a Notice of Allowance. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Respectfully submitted,

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